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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/039,307

10/26/2001

Michael R.S. Hill

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EXAMINER

OROPEZA, FRANCES P

ART UNIT

PAPER NUMBER

3766

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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31 DAYS

01/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

NT

<b>Office Action Summary</b>	<b>Application No.</b> 10/039,307	<b>Applicant(s)</b> HILL	
	<b>Examiner</b> Frances P. Oropeza	<b>Art Unit</b> 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/19/06 (Amendment).
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***DETAILED ACTION***

***Election/Restrictions***

- I. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-16, drawn to a method comprising delivering cardiac pacing, and providing electrical stimulation to nervous tissue to improve the balance of a neuro-endocrinological system, classified in class 607, subclass 9.
  - II. Claims 17-27, drawn to an apparatus comprising a means for delivering cardiac pacing, and a means for automatically applying electrical stimulation to nervous tissue to improve the balance of a neuro-endocrinological system based on a physiological signal, classified in class 607, subclass 9.
  - III. Claims 28-29, drawn to methods comprising delivering cardiac overdrive pacing or post-extra systolic potentiation therapy, and applying electrical stimulation to nervous tissue to balance/ improve the balance of a neuro-endocrinological system based on one of more psychological parameters, classified in class 607, subclass 9.
  - IV. Claims 30, drawn to an apparatus comprising a means for delivering overdrive cardiac pacing or post-extra systolic potentiation therapy, and a means for automatically applying and automatically adjusting electrical stimulation to nervous tissue to improve the balance of a neuro-endocrinological system based on one or more physiological parameters, classified in class 607, subclass 9.

Art Unit: 3766

- V. Claims 31, drawn to an apparatus comprising a means for delivering overdrive cardiac pacing or post-extra systolic potentiation therapy, and a means for automatically applying and automatically adjusting electrical stimulation to nervous tissue to alter the functioning of a heart based on one or more physiological parameters, classified in class 607, subclass 9.
- VI. Claims 32, drawn to an apparatus comprising a means for delivering cardiac overdrive pacing or post-extra systolic potentiation therapy, and a controller to automatically apply and automatically adjust electrical stimulation to nervous tissue associated with a neuro-endocrinological system based on one of more psychological parameters, classified in class 607, subclass 9.
- VII. Claims 33-40, drawn to an apparatus comprising a means for delivering cardiac overdrive pacing or post-extra systolic potentiation therapy, and a controller for applying electrical stimulation to nervous tissue to improve cardiac efficiency based on a psychological signal, classified in class 607, subclass 9.

The inventions are distinct, each from the other because of the following reasons:

Inventions I. and III. are different methods and are therefore individual and distinct.

Invention II. and inventions IV. V. and VI. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II. has separate utility such as an apparatus for improving cardiac performance not requiring the delivery of overdrive pacing of post-extra systolic potentiation therapy but rather providing pacing therapy. See MPEP § 806.05(d).

Invention IV. and invention V. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination IV. has separate utility such as an apparatus for improving cardiac performance not requiring electrical stimulation to alter the heart, but rather applying electrical stimulation to improve balance of a neuro-endocrinological system. See MPEP § 806.05(d).

Invention IV. and inventions VI. and VII. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination IV. has separate utility such as an apparatus for improving cardiac performance not requiring a controller, but rather using a means for automatically applying and automatically adjusting the electrical stimulation to improve balance of a neuro-endocrinological system. See MPEP § 806.05(d).

Art Unit: 3766

Invention V. and inventions VI. and VII. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination V. has separate utility such as an apparatus for improving cardiac performance not requiring a controller, but rather using a means for automatically applying and automatically adjusting the electrical stimulation to alter the functioning of the heart. See MPEP § 806.05(d).

Invention VI. and invention VII. are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination VI. has separate utility such as an apparatus for improving cardiac performance not by stimulating non-specific neural tissue, but rather by stimulating a nervous tissue associated with a neuro-endocrinological system. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to

Art Unit: 3766

provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

The Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143

The Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### *Conclusion*


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Art Unit: 3766

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frances P. Oropeza  
Patent Examiner  
Art Unit 3766

JPO  
1-21-07

  
Robert E. Pezzuto  
Supervisory Patent Examiner  
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